

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION RULES OF THE WEST VIRGINIA
INSURANCE COMMISSIONER

SERIES 22
MEDICAL REVIEW

§85-22-1. General.

1.1. Scope. -- This exempt legislative rule establishes the requirements and procedures to be followed by the Insurance Commissioner, carriers, self-insured employers, and third-party administrators regarding certain medical treatment decisions being made in the administration of workers' compensation claims.

1.2. Authority. -- W. Va. Code §§23-2C-22; 33-2-10(b); and 33-2-21(a). Pursuant to W. Va. Code §§23-2C-5(c)(2) and 33-2-10(b), workers' compensation rules proposed by the Insurance Commissioner and approved by the Industrial Council are not subject to W. Va. Code §§29A-3-9 through 29A-3-16, included.

1.3. Filing Date. --

1.4. Effective Date. --

§85-22-2. Definitions.

As used in this exempt legislative rule, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

2.1. "Carrier" means any insurer authorized by the Insurance Commissioner to provide workers' compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code.

2.2. "Medical review" means the clinical review of the case file by a West Virginia licensed physician.

2.3. "Responsible party" means the Insurance Commissioner, carrier, self-insured employer or third-party administrator whichever is applicable.

2.4. "Self-insured employer" means an employer who has been granted self-insured status under the provisions of W. Va. Code §23-2-9.

2.5. "Third-party administrator" means a third-party administrator licensed to administer workers' compensation claims pursuant to W. Va. Code §§23-2C-17 and 33-46-1 *et seq.*

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§85-22-3. Medical Review Required.

3.1. No responsible party may deny payment for the following without first subjecting the request to medical review:

3.1.a. Surgery;

3.1.b. Durable medical equipment and/or device;

3.1.c. Medications which were previously paid for by the responsible party and were in use by the claimant when the claimant reached maximum medical improvement; and

3.1.d. Compensability in a claim based upon an assertion that there is not a medical causal relationship between the alleged occurrence or exposure and injury or disease.

3.2. Prior to a responsible party denying payment on a request as described in subdivisions a through d, subsection 3.1 of this section, the decision must be authorized by a physician licensed in the State of West Virginia who has performed medical review of the file.

3.3. Any order denying payment on a request as described in subdivisions a through d, subsection 3.1 of this section shall include the name and professional address of the physician who authorized such denial.

§85-22-4. Requests Deemed Approved.

4.1. If a responsible party fails to issue a written response to the claimant or the claimant's counsel of record regarding a medical request within fifteen (15) days of receipt of the same, the request shall be deemed to have been approved and the responsible party shall be required to pay for the request: *Provided*, That this provision is not intended to affect a responsible party's duty to "act upon" such a request consistent with the provisions of W. Va. CSR §85-1-10.3. et seq., and is a separate and distinct requirement from the provisions of W. Va. CSR §85-1-10.3. et seq.

4.2. If a responsible party fails to state the name of the physician who authorized the denial in the decision denying payment on a request as described in subdivisions a through d, subsection 3.1 of this rule, the request shall be deemed to have been approved and the responsible party shall be required to pay for the request.